

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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ROSA P.,

Plaintiff, 1:20-cv-12284-NLH

v.

**OPINION**

COMMISSIONER OF SOCIAL  
SECURITY,<sup>1</sup>

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**APPEARANCES:**

JENNIFER LILLEY STONAGE  
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*On behalf of Plaintiff*

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*On behalf of the Commissioner*

**HILLMAN**, District Judge

This matter comes before the Court pursuant to Section  
205(g) of the Social Security Act, as amended, 42 U.S.C. §

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<sup>1</sup> On July 9, 2021, Kilolo Kijakazi became the Acting Commissioner of the Social Security Administration.

405(g), regarding Plaintiff's application for Disability Insurance Benefits ("DIB")<sup>2</sup> under Title II of the Social Security Act. 42 U.S.C. § 423, et seq. The issue before the Court is whether the Administrative Law Judge ("ALJ") erred in finding that there was "substantial evidence" that Plaintiff was not disabled during the relevant period. For the reasons stated below, this Court will affirm that decision.

### **I. BACKGROUND AND PROCEDURAL HISTORY**

On May 1, 2017, Plaintiff protectively filed the instant application for DIB,<sup>3</sup> alleging that she became disabled on March 7, 2012. (ECF 12 at 1). Plaintiff previously filed an application for DIB on July 31, 2013 and that application was initially denied on April 9, 2014 and upon reconsideration on September 9, 2014. (Id. at 2). An ALJ held a hearing on December 12, 2016 and issued an unfavorable decision on February 22, 2017. (Id.) Plaintiff did not appeal that decision. (Id.)

In the instant matter, Plaintiff claims that she can no

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<sup>2</sup> DIB is a program under the Social Security Act to provide disability benefits when a claimant with a sufficient number of quarters of insured employment has suffered such a mental or physical impairment that the claimant cannot perform substantial gainful employment for at least twelve months. 42 U.S.C. § 423 et seq.

<sup>3</sup> A protective filing date marks the time when a disability applicant made a written statement of his or her intent to file for benefits. That date may be earlier than the date of the formal application and may provide additional benefits to the claimant. See SSA Handbook 1507; SSR 72-8.

longer work as a casino dealer, because of her impairments of lumbar degenerative disc disease, post-laminectomy syndrome, lupus, obesity hypertension, hyperlipidemia, urinary incontinence, obstructive sleep apnea, carpal tunnel syndrome, major depressive disorder, bipolar disorder, and anxiety.<sup>4</sup>

Plaintiff's claim was denied initially and upon reconsideration. Plaintiff requested a hearing before an ALJ, which was held on January 8, 2020. On March 3, 2020, the ALJ issued an unfavorable decision. Plaintiff's Request for Review of Hearing Decision was denied by the Appeals Council on July 2, 2020 making the ALJ's decision final. Plaintiff brings this civil action for review of the Commissioner's decision.

## **II. DISCUSSION**

### **A. Standard of Review**

Under 42 U.S.C. § 405(g), Congress provided for judicial review of the Commissioner's decision to deny a complainant's application for social security benefits. Ventura v. Shalala, 55 F.3d 900, 901 (3d Cir. 1995). A reviewing court must uphold the Commissioner's factual decisions where they are supported by "substantial evidence." 42 U.S.C. §§ 405(g), 1383(c)(3); Fagnoli v. Massanari, 247 F.3d 34, 38 (3d Cir. 2001); Sykes v.

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<sup>4</sup> On application date of March 7, 2017, Plaintiff was 55 years old, which is defined as a person of "advanced age" (age 55 or older). 20 C.F.R. § 404.1563.

Apfel, 228 F.3d 259, 262 (3d Cir. 2000); Williams v. Sullivan, 970 F.2d 1178, 1182 (3d Cir. 1992). Substantial evidence means more than "a mere scintilla." Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting Consolidated Edison Co. V. NLRB, 305 U.S. 197, 229 (1938)). It means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Id. The inquiry is not whether the reviewing court would have made the same determination, but whether the Commissioner's conclusion was reasonable. See Brown v. Bowen, 845 F.2d 1211, 1213 (3d Cir. 1988).

A reviewing court has a duty to review the evidence in its totality. See Daring v. Heckler, 727 F.2d 64, 70 (3d Cir. 1984). "[A] court must 'take into account whatever in the record fairly detracts from its weight.'" Schonewolf v. Callahan, 972 F. Supp. 277, 284 (D.N.J. 1997) (quoting Willbanks v. Secretary of Health & Human Servs., 847 F.2d 301, 303 (6th Cir. 1988) (quoting Universal Camera Corp. V. NLRB, 340 U.S. 474, 488 (1951))).

The Commissioner "must adequately explain in the record his reasons for rejecting or discrediting competent evidence." Ogden v. Bowen, 677 F. Supp. 273, 278 (M.D. Pa. 1987) (citing Brewster v. Heckler, 786 F.2d 581 (3d Cir. 1986)). The Third Circuit has held that an "ALJ must review all pertinent medical evidence and explain his conciliations and rejections." Burnett

v. Comm'r of Soc. Sec. Admin., 220 F.3d 112, 122 (3d Cir. 2000).

Similarly, an ALJ must also consider and weigh all the non-medical evidence before him. Id. (citing Van Horn v. Schweiker, 717 F.2d 871, 873 (3d Cir. 1983)); Cotter v. Harris, 642 F.2d 700, 707 (3d Cir. 1981).

The Third Circuit has held that access to the Commissioner's reasoning is indeed essential to a meaningful court review:

Unless the [Commissioner] has analyzed all evidence and has sufficiently explained the weight he has given to obviously probative exhibits, to say that his decision is supported by substantial evidence approaches an abdication of the court's duty to scrutinize the record as a whole to determine whether the conclusions reached are rational.

Gober v. Matthews, 574 F.2d 772, 776 (3d Cir. 1978). Although an ALJ, as the factfinder, must consider and evaluate the medical evidence presented, Fargnoli, 247 F.3d at 42, "[t]here is no requirement that the ALJ discuss in its opinion every tidbit of evidence included in the record," Hur v. Barnhart, 94 F. App'x 130, 133 (3d Cir. 2004). In terms of judicial review, a district court is not "empowered to weigh the evidence or substitute its conclusions for those of the fact-finder." Williams, 970 F.2d at 1182. However, apart from the substantial evidence inquiry, a reviewing court is entitled to satisfy itself that the Commissioner arrived at his decision by

application of the proper legal standards. Sykes, 228 F.3d at 262; Friedberg v. Schweiker, 721 F.2d 445, 447 (3d Cir. 1983); Curtin v. Harris, 508 F. Supp. 791, 793 (D.N.J. 1981).

**B. Standard for DIB**

The Social Security Act defines "disability" for purposes of an entitlement to a period of disability and disability insurance benefits as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months. See 42 U.S.C. § 1382c(a)(3)(A). Under this definition, a plaintiff qualifies as disabled only if her physical or mental impairments are of such severity that she is not only unable to perform her past relevant work, but cannot, given her age, education, and work experience, engage in any other type of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which she lives, or whether a specific job vacancy exists for her, or whether she would be hired if she applied for work. 42 U.S.C. § 1382c(a)(3)(B).

The Commissioner has promulgated regulations for determining disability that require application of a five-step sequential analysis. See 20 C.F.R. § 404.1520. This five-step process is summarized as follows:

1. If the claimant currently is engaged in substantial gainful employment, she will be found "not disabled."
2. If the claimant does not suffer from a "severe impairment," she will be found "not disabled."
3. If the severe impairment meets or equals a listed impairment in 20 C.F.R. Part 404, Subpart P, Appendix 1 and has lasted or is expected to last for a continuous period of at least twelve months, the claimant will be found "disabled."
4. If the claimant can still perform work she has done in the past ("past relevant work") despite the severe impairment, she will be found "not disabled."
5. Finally, the Commissioner will consider the claimant's ability to perform work ("residual functional capacity"), age, education, and past work experience to determine whether or not she is capable of performing other work which exists in the national economy. If she is incapable, she will be found "disabled." If she is capable, she will be found "not disabled."

20 C.F.R. § 404.1520(b)-(f). Entitlement to benefits is therefore dependent upon a finding that the claimant is incapable of performing work in the national economy.

This five-step process involves a shifting burden of proof. See Wallace v. Secretary of Health & Human Servs., 722 F.2d 1150, 1153 (3d Cir. 1983). In the first four steps of the analysis, the burden is on the claimant to prove every element of her claim by a preponderance of the evidence. See id. In the final step, the Commissioner bears the burden of proving that work is available for the Plaintiff: "Once a claimant has proved that he is unable to perform his former job, the burden

shifts to the Commissioner to prove that there is some other kind of substantial gainful employment he is able to perform.” Kangas v. Bowen, 823 F.2d 775, 777 (3d Cir. 1987); see Olsen v. Schweiker, 703 F.2d 751, 753 (3d Cir. 1983).

### **C. Analysis**

At the outset, the ALJ noted that although the Plaintiff alleged disability onset as of March 7, 2011, the Commissioner already adjudicated that Plaintiff was not disabled from that date through the date of the prior denial, February 22, 2017. (R. at 21). The ALJ noted that the doctrine of res judicata precluded her from reevaluating whether Plaintiff was disabled for the encompassed prior to February 22, 2017. (Id.); 20 C.F.R. § 404.957(c)(1) (“The doctrine of res judicata applies in that we have made a previous determination or decision under this subpart about your rights on the same facts and on the same issue or issues, and this previous determination or decision has become final by either administrative or judicial action[.]”) In coming to that conclusion, the ALJ determined that “[a] review of the prior file and the current file reveals that claimant has not submitted any new and material evidence for the period previously adjudicated.” (R. at 21). Further, the ALJ determined that the end date of the relevant period for Plaintiff’s claims was March 31, 2017, as that was the last date that Plaintiff was insured. (R. at 22); Amy F. v. Comm'r of



Soc. Sec. Admin., No. CV 20-11613 (ZNQ), 2022 WL 1748010, at \*4 (D.N.J. May 31, 2022) (noting that the relevant period ends on the date last insured).

At step one, the ALJ found that Plaintiff had not engaged in substantial gainful activity between February 23, 2017 and March 31, 2017, the relevant period for Plaintiff's claim. (R. at 23-24). At step two, the ALJ found that Plaintiff's impairments of lumbar degenerative disc disease, post-laminectomy syndrome, lupus, and obesity were severe. (Id. at 24). The ALJ also determined that Plaintiff's history of hypertension, hyperlipidemia, urinary incontinence, obstructive sleep apnea, carpal tunnel syndrome, major depressive disorder, and anxiety, were not severe.<sup>5</sup> (Id.) At step three, the ALJ determined that Plaintiff's severe impairments or her severe impairments in combination with her other impairments did not equal the severity of one of the listed impairments. (Id. at 26-27).

The ALJ next determined that Plaintiff had the residual functional capacity ("RFC") to perform a full range of work at the light level.<sup>6</sup> (Id. at 27). At steps four and five, the ALJ

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<sup>5</sup> In making this determination, the ALJ noted that Plaintiff did not receive treatment for the non-severe conditions beyond routine follow up during the relevant period. (R. at 24).

<sup>6</sup> 20 C.F.R. § 404.1567 ("Physical exertion requirements. To determine the physical exertion requirements of work in the

determined that based on Plaintiff's RFC, she was able to perform her past relevant work of a card dealer. (Id. at 31). The ALJ therefore concluded that Plaintiff was not disabled. (Id.)

Plaintiff argues that the ALJ erred in her decision because she improperly disregarded the medical opinions of her treating physicians, Dr. Anup Mani and Dr. Abdul Qadir, found Plaintiff's mental health conditions and carpal non-severe and failed to include them in the RFC, did not find a limitation beyond light work, failed to include in the RFC a limitation regarding Plaintiff's ability to speak English, and dismissed years of medical records based on a five-week gap in those records causing a failure to include her anxiety in her RFC. (ECF 11 at 1-2).

Plaintiff mischaracterizes the ALJ's opinion. With respect to her first assignment of error, Plaintiff argues that the ALJ failed to account for contradictory medical evidence when discounting the medical opinions of Plaintiff's treating physicians, Dr. Mani and Dr. Qadir. (Id. at 15-17). First, Plaintiff appears to be relying on the "treating physician rule", which under previous law required the ALJ to give deference to the medical opinion of a claimant's treating

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national economy, we classify jobs as sedentary, light, medium, heavy, and very heavy.").

physician. See Fagnoli, 247 F.3d at 43. However, the regulations were revised as of March 27, 2017 to eliminate the old "treating physician rule." See 82 F.R. 5844. Plaintiff filed her claim after the regulation was changed and thus the old regulation does not apply to her case.

In any case, the ALJ did not completely "disregard" the opinions of Dr. Mani and Dr. Qadir; she explained why she did not find them persuasive. With respect to Dr. Mani, who treated Plaintiff's mental health impairments, she noted that the conclusions in the form completed by Dr. Mani were not supported by treatment notes in the record and that there was no record of treatment by Dr. Mani in the relevant period. (R. at 25-26). While an ALJ should consider a claimant's history prior to the relevant period to inform a conclusion as to whether or not the claimant is disabled, the crux is whether there is evidence of a disability during the relevant period. Miller v. Comm'r of Soc. Sec., No. 20-3642, 2021 WL 3137439, at \*2 (3d Cir. July 26, 2021) ("When a medical report does not address a claimant's condition during the relevant period, the report has 'little, if any, relevance to whether [the claimant] was disabled during that time.'" (quoting Zirnsak v. Colvin, 777 F.3d 607, 614 (3d Cir. 2014))). The ALJ explicitly referenced that she had considered treatment notes from prior to the relevant period but ultimately determined that the lack of notes during the relevant

period undermined Dr. Mani's medical opinion. (R. at 25-26).

The same is true for the ALJ's treatment of Dr. Qadir's medical opinion. The ALJ explained that she found it unpersuasive because it was completed well after the relevant period. (R. at 30). She explained that although Dr. Qadir indicated that he had been seeing Plaintiff since 2015, he did not link his opinion rendered after Plaintiff's last insured date to the relevant period. (Id.) The ALJ finally explained that Dr. Qadir's conclusions about the severity of Plaintiff's conditions were not supported by the treatment history in the record. (Id.) The Court is thus satisfied that the ALJ considered the medical evidence in the record and applied the appropriate legal standards in discounting the opinions of Dr. Mani and Dr. Qadir. Fargnoli, 247 F.3d at 42; Sykes, 228 F.3d at 262.

Plaintiff's next argument is that the ALJ improperly found her mental health conditions and carpal tunnel to be non-severe at step two and then compounded the error by failing to incorporate the limitations posed by them in the RFC. (ECF 11 at 17-21). At step two, a claimant has the burden to show that she had "(1) a medically determinable impairment shown by medically acceptable clinical and laboratory diagnostic techniques (2) that meets the duration requirement and (3) which significantly limited [her] ability to perform basic work

activities.” Carter v. Comm'r Soc. Sec., 805 F. App'x 140, 142 (3d Cir. 2020). At step two, the ALJ enumerated the four areas of mental functioning that she considered when classifying Plaintiff's mental health conditions as non-severe and explained that she found they only left Plaintiff with a “mild impairment” and thus did not significantly limit her ability to do work activities. (R. at 24-26). For Plaintiff's carpal tunnel, at step two, the ALJ based her assessment that the condition was not severe on the fact that Plaintiff “had no carpal tunnel treatment aside from a remote history of surgery prior to the relevant period.” (R. at 24). The ALJ noted the absence of evidence in the record that the condition precluded her ability to work for 12 consecutive months. (Id.) The Court will not second guess these determinations by the ALJ because the ALJ adequately explained her reasoning.

Further, the ALJ's decision does address Plaintiff's mental health conditions and carpal tunnel in the RFC. For the mental health conditions, the ALJ specifically stated “the following residual functional capacity assessment reflects the degree of limitation the undersigned has found in the ‘paragraph B’ mental function analysis.” (Id. at 26). The RFC analysis also explicitly mentions Plaintiff's mental health conditions in the context of considering her function reports and testimony at the hearing. (Id. at 28). The same is true of Plaintiff's carpal

tunnel. (Id.) Given that the ALJ's consideration of Plaintiff's conditions is referenced in the RFC, the ALJ was not required to reiterate every tidbit of evidence relating to them in arriving at the RFC. Hur, 94 F. App'x at 133. Thus, the Court finds no error in the ALJ's treatment of Plaintiff's mental health conditions and carpal tunnel in the RFC analysis.<sup>7</sup>

Next, Plaintiff argues that the ALJ's determination that Plaintiff could complete light work was error because the ALJ rejected medical evidence that undermined that conclusion without explanation. Plaintiff primarily cites to medical evidence that was outside of the relevant period, much of it the opinion by Dr. Qadir prepared after the relevant period. As stated above, medical evidence from after the relevant period is not particularly salient to the disability determination. Miller, 2021 WL 3137439 at \*2. The medical evidence in the record for the time period in question, primarily visit notes by Dr. Ana Cilursu from March 16, 2017, while documenting pain by

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<sup>7</sup> The Court also notes that the RFC analysis requires the ALJ to consider only those impairments that are documented. Morder v. Colvin, 216 F. Supp. 3d 516, 528 (M.D. Pa. 2016) ("It is axiomatic that an RFC assessment must include all of a plaintiff's documented impairments."). The ALJ specifically noted that there was no documentation of Plaintiff's mental health conditions during the relevant period in the record. (R. at 25) ("The record, however, during the relevant period, shows no mental status examinations or psychiatric treatment to substantiate these limitations."). In any case, the ALJ considered Plaintiff's mental health conditions based on Plaintiff's prior medical history.

Plaintiff, is sparse and appears to be just a follow up visit. (R. at 649-651). The ALJ specifically referenced that doctor's visit in her determination regarding light work and found that it was just a "routine" follow up. (R. at 29). Plaintiff also mischaracterizes the ALJ's decision in stating that it did not consider the affect of Plaintiff's obesity on the light work determination. The ALJ stated, "[t]he functional effects of the claimant's obesity on the ability to perform basic work activities has been considered, under SSR 19-2p, and incorporated in the residual functional capacity assigned herein accordingly." (Id.) Again, the ALJ was not required to parse every tidbit of evidence when her opinion was otherwise supported by substantial evidence. Hur, 94 F. App'x at 133.

Plaintiff's fourth argument is that the ALJ erred by not including limitations in the RFC consistent with Plaintiff's limited ability to communicate in English. (ECF 11 at 25). Plaintiff relies on this Court's decision in Saez-Ortiz v. Comm'r of Soc. Sec., No. 1:17-CV-06286-NLH, 2019 WL 324922, at \*7 (D.N.J. Jan. 25, 2019) where the Court remanded a case to the Commissioner for failure to discuss the impact of the claimant's ability to speak English in the RFC. But Saez- Ortiz is factually different from the case here.

In Saez-Ortiz, this Court was faced with a situation in which the plaintiff argued that the ALJ failed to provide the

vocational expert (the "VE") with a hypothetical that accounted for the plaintiffs lack of English proficiency and that that error was compounded because the ALJ did not solicit from the VE a reasonable explanation as to why she could perform certain jobs that the Dictionary of Occupational Titles listed as requiring a higher level of proficiency in English than the plaintiff possessed. See generally id. The key difference there is that the ALJ in Saez-Ortiz affirmatively found the plaintiff to be illiterate in English. Id. at \*6. Here, the ALJ made no such finding and stated that Plaintiff specifically came to the United States to learn how to speak English and had "specialized training learning how to speak English" (R. at 25). Though the Plaintiff mentioned that she had difficulty in English and used an interpreter at the hearing, she testified that she used English to communicate with customers when she was a casino dealer. (R. at 44). In addition, Plaintiff indicated on a medical form from 2015 that one of her preferred languages was English. (R. at 1493). Based on the evidence in the record, the Court discerns no error in the ALJ's decision not to include a limitation in English in the RFC.<sup>8</sup>

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<sup>8</sup> It is also curious, and telling, that Plaintiff's argument boils down to a contention that she cannot do her prior job as a casino dealer because of her difficulty speaking English when she testified that she was able to communicate in English when doing that job in the past.



In Plaintiff's final argument, she states, "The ALJ erred in dismissing a decade of evidence documenting the debilitating nature of Plaintiff's physical and psychological conditions based on a five-week gap in medical records." (ECF 11 at 26). The "five-week gap" that Plaintiff references, though, is the entirety of the relevant period from February 23, 2017 to March 31, 2017. Plaintiff's disability in the period prior to that date was already adjudicated in a previous decision by a different ALJ, which Plaintiff did not appeal. (ECF 11 at 1; R at 21). Res judicata barred the ALJ from making a finding of disability prior to February 23, 2017. 20 C.F.R. § 404.957(c)(1). Similarly, the ALJ was precluded from making a disability determination after Plaintiff's last insured date of March 31, 2017. See Pearson v. Comm'r of Soc. Sec., 839 F. App'x 684, 688 (3d Cir. 2020) ("While evidence generated after a claimant's date last insured can shed light on his condition during the insured period, that evidence does not necessarily compel the Commissioner to conclude that the claimant's condition during the insured period was as severe as it became after the date last insured.").

The ALJ did not disregard Plaintiff's medical records from before and after the relevant period. Rather, she discounted them based on her determination of how probative they were of whether Plaintiff was disabled during the relevant period. The

ALJ cited numerous times to medical records from prior to and after the relevant period and explained how they factored into her analysis. (R. at 24-30). She did not simply reject a medical statement "for technical reasons, i.e. the date it was completed." Murphy v. Comm'r of Soc. Sec., No. CV 19-6425 (RBK), 2020 WL 1486041, at \*9 (D.N.J. Mar. 26, 2020). Overall, the ALJ appropriately focused her review on medical records that spoke to Plaintiff's limitations during the relevant period. Miller, 2021 WL 3137439 at \*2. Ultimately, Plaintiff appears to be trying to get around the res judicata bar associated with the adjudication of her previous claim. The Court will not countenance such a workaround in the absence of adequate records during the relevant time period of the renewed application.

### **III. Conclusion**

For the reasons expressed above, the decision of the ALJ was supported by substantial evidence and must be affirmed.

An accompanying Order will be issued.

Date: July 7, 2022  
At Camden, New Jersey

s/ Noel L. Hillman  
NOEL L. HILLMAN, U.S.D.J.